IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2915 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANBHAI RAVJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2915 of 2001

MR MM TIRMIZI for Petitioners No. 1-3

MR VM PANCHOLI, APP, for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/12/2001

ORAL JUDGEMENT

1. Leave to amend.

2. By this petition, the petitioners seek quashment

of a criminal complaint lodged by Food Inspector, Gandhinagar, in the Court of learned Judicial Magistrate, First Class, Anand, vide Criminal Case No.8875 of 1987.

3. The short facts, as stated in the complaint, are that the petitioners are running business in the name and under the style of Shreeji Ras Bhandar, at Anand. When the Food Inspector visited the premises on May 20, 1997 at 14.45 hours, petitioner No.1 was present in the business premises. The Food Inspector inspected the premises and found 24 packets containing carbide, which was stored by petitioner No.1 for ripening the fruits. Sample was collected and was sent to Public Analyst, the report of which is found to be positive. The complaint is, therefore, lodged against the petitioners along with Shreeji Ras Bhandar, Jayesh Baldevbhai Patel and Chandubhai Shankarbhai Patel.

4. Out of the accused persons, only the petitioners have approached this Court with this petition for quashment. Learned Advocate Mr. Tirmizi submitted that only packets containing carbide were found in the cellar of the premises. No adulteration is alleged. There is nothing to indicate that the adulterant, namely, carbide, is injuries to health and, therefore, the complaint may be quashed. It is also contended that there is nothing to indicate that the petitioners are in-charge of and are responsible to the company for conduct of business of the company at the time when the offence was committed and, therefore, the complaint may be quashed qua the petitioners.

5. Learned Additional Public Prosecutor, Mr. Pancholi, has drawn attention of this Court to Section 7, clause (vi), which prohibits sale, store or distribution of any adulterant. He has drawn attention of this Court to the report on carbide. The report found to be positive for an adulterant. According to Mr. Pancholi, therefore, even storing of such adulterant is an offence. He submitted that Rule 44AA of the Prevention of Food Adulteration Rules, 1955 prohibits use of carbide gas in ripening fruits and petitioner No.1, who was present at the time of visit of the Food Inspector, admitted that carbide was being used for ripening the fruits. He, therefore, urged that the complaint may not be quashed.

6. At this stage, learned Advocate Mr. Tirmizi states that he does not press the petition qua petitioner No.1-Chimanbhai Ravjibhai Patel.

7. Having regard to the contentions raised before

this Court in respect of petitioners No.2 and 3, it requires to be noted that the premises which was visited by the Food Inspector is the business premises of Shreeji Ras Bhandar. The complaint is totally silent about any connection of petitioners No.2 and 3, namely, Rajendrabhai Narsinhbhai Patel and Chandubhai Shankarbhai Patel with Shreeji Ras Bhandar. There is nothing to indicate that they were in-charge of and were responsible to the firm for the conduct of business of the firm at the time when the offence was committed. Therefore, the requirements of Section 17(i)(a) and (ii) of the Prevention of Food Adulteration Act cannot be said to have been satisfied. The petition, therefore, deserves to be allowed only qua petitioners No.2 and 3. The petition is, therefore, partly allowed. The complaint being Criminal Case No.8875 of 1997 of the Court of learned Judicial Magistrate, First Class, Anand, stands quashed qua petitioners No.2 and 3, namely, Rajendrabhai Narsinhbhai Patel and Chandubhai Shankarbhai Patel, who are accused Nos.3 and 5 in the said complaint. It is clarified that the complaint against Shreeji Ras Bhandar, Chimanbhai Ravjibhai Patel and Jayesh Baldevbhai Patel is not quashed and it may be taken to its logical end. Rule is made absolute accordingly.

[A.L. DAVE, J.]

gt